

NOT FOR PUBLICATION

FOR UPLOAD

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. THOMAS AND ST. JOHN

Carole G. Valeri,

Plaintiff,

v.

Civ. No. 1997-045

Marriott Corporation, d/b/a  
Marriott's Frenchman's Reef Beach  
Resort; Marriott International  
Inc.; F.R. Delaware, Inc.; F.R.  
Management Corporation; Prime  
Hospitality Corporation; Raider  
Construction, Inc.; Joseph W.  
Raffa, d/b/a Raider Construction;  
Raffa Associates, Inc.; Joseph W.  
Raffa; Frank T. Raffa; and Joseph  
M. Reboulet,

Defendants.

ATTORNEYS:

Lorren D. Caffee, Esq.

St. Thomas, U.S.V.I.

*For the plaintiff,*

Claudette V. Ferron, Esq.

St. Thomas, U.S.V.I.

*For defendants Joseph W. Raffa, d/b/a Raider  
Construction, Raffa Associates, Inc., Joseph W. Raffa  
and Frank T. Raffa.*

MEMORANDUM

Moore, J.

Plaintiff Carole G. Valeri's ["Valeri" or "plaintiff"] has moved for relation back of her third amended complaint to include newly-named defendants Raffa Associates, Inc., Joseph W. Raffa, d/b/a Raider Construction, Joseph W. Raffa and Frank T. Raffa

[collectively "defendants"]. These parties oppose plaintiff's motion and have moved to dismiss them from the third amended complaint. For the reasons stated below, I will deny plaintiff's motion and grant defendants' motion.

### **I. PROCEDURAL BACKGROUND**

This matter stems from a slip-and-fall at the Frenchman's Reef Hotel on February 21, 1996, when plaintiff broke her ankle after falling on some steps near the pool - both the steps and pool had been built by defendant Raider Construction, Inc ["Raider Construction"]. On March 20, 1997, plaintiff filed her original complaint, naming Marriott Corporation, d/b/a Marriott's Frenchman's Reef Resort; Chicago Wheaton Partners; VMS Realtors; VMS Realty, Inc.; and Raider Construction. On May 15, 1997, plaintiff filed her first amended complaint, in which she replaced three defendants (VMS Realtors, VMS Realty and Chicago Wheaton) with Marriott International Inc.; F.R. Management Corporation and F.R. Delaware, Inc.

The parties entered into an unsuccessful mediation on July 24, 1998. On September 14, 1998, defendant Raider Construction disclosed documents to plaintiff identifying the contractor as Raffa Associates, Inc./Raider Construction. On March 25, 1999, the parties as named in the first amended complaint entered into

a second round of mediation, which also failed.

On April 6, 1999, the magistrate judge granted Valeri leave to amend to implead related entities of Frenchman's Reef Hotel, which she did on April 23d by filing her second amended complaint adding Prime Hospitality Corporation as a defendant. On March 7, 2000, a year and a half after Raider Construction identified Raffa Associates, Inc. as the contractor and after more discovery and production of documents, plaintiff sought leave to file a third amended complaint to add Raffa Associates, Inc., Joseph W. Raffa, d/b/a Raider Construction, Joseph W. Raffa, and Frank T. Raffa as defendants. On May 23, 2000, defendant Raider Construction, joined by the already named defendants, filed an opposition to plaintiff's motion to file a third amended complaint. On January 10, 2001, the magistrate judge granted plaintiff's request to file a third amended complaint, but denied without prejudice her request for relation back of the amendments to the date the original complaint was filed.

## **II. DISCUSSION**

The pertinent part of Rule 15(c) of the Federal Rules of Civil Procedure provides that an amendment of a pleading relates back to the date of the original pleading when

(3) the amendment changes the party or the naming of the party against whom a claim is asserted if the

foregoing provision (2) is satisfied and, within the period provided by Rule 4(m) for service of the summons and complaint [120 days], the party to be brought in by amendment (A) has received such notice of the institution of the action that the party will not be prejudiced in maintaining a defense on the merits, and (B) knew or should have known that, *but for a mistake concerning the identity of the proper party*, the action would have been brought against the party.

FED. R. CIV. P. 15(c)(3) (emphasis added). Accordingly, I will need to determine whether each newly named defendant had notice of the action, and, if so, that each newly named defendant knew or should have known that Valeri would have sued them if she had not mistaken their identities.

**A. Joseph and Frank Raffa**

Plaintiff attempts to name Joseph and Frank Raffa as defendants in their individual capacities and as liquidating trustees of Raider Construction<sup>1</sup> pursuant to Rule 25(c) of the Federal Rules of Civil Procedure, which allows for transfer of interest. In support of her argument for naming the Raffas as liquidating trustees, Valeri relies on 13 V.I.C. § 286(b), which states that the

directors [as] liquidating trustees . . . shall have authority to sue for and recover the [dissolved corporation's] debts and property, by the name of the corporation, and shall be suable by the same name, or in their own names or individual capacities for the debts owing by such corporation, and shall be jointly

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<sup>1</sup> On September 24, 1999, the State of Florida administratively dissolved Raider Construction for failure to file an annual report.

and severally responsible for such debts, to the amount of the monies and property of the corporation which shall come to their hands or possession as such trustees.

Since both Joseph and Frank Raffa are directors and liquidating trustees of Raider Construction, plaintiff argues that section 286(b) permits her to add them individually. Valeri's argument, however, is unpersuasive. Section 286 does not require that liquidating trustees be substituted for a dissolved corporation, but instead gives the plaintiff the discretion to sue either the corporation or its liquidating trustees. Thus, as Valeri has already properly named Raider Construction as a defendant, there is no need to add Joseph and Frank Raffa as liquidating trustees. Accordingly, there was no mistake of identity in failing to name Joseph or Frank Raffa as liquidating trustees and Rule 15(c) is inapplicable to allow for the relation back of these proposed defendants.<sup>2</sup>

**B. Joseph Raffa d/b/a Raider Construction**

Plaintiff also seeks to add Joseph Raffa as a defendant under the title of Joseph Raffa d/b/a Raider Construction in light of Joseph Raffa's efforts in procuring the pool contract. According to Valeri, Joseph Raffa contracted with the Frenchman's Reef Hotel on July 11, 1995, for a pool renovation project.

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<sup>2</sup> Similarly, Valeri's efforts to add Joseph and Frank Raffa as defendants in their individual capacities also fails as there is no evidence that either individual acted in any capacity other than as corporate officers.

Joseph Raffa then applied for and was granted a business license by the Territory on July 25th - the license was valid from July 1, 1995, to June 30, 1996. Joseph Raffa entered "Raider Construction" as the name of the business on the license. (Mem. in Supp. of Pl.'s Opp. to Defs.' Renewed Mot. to Dismiss; Pl.'s Renewed Mot. for Relation Back; and Mot. for Substitution of Joseph W. Raffa and Frank T. Raffa for Raider Construction, Inc. as Transferees of Interest Pursuant to Rule 25(c), Ex. J.) Plaintiff also alleges that Raider Construction was not authorized to do business in the Territory until August of 1997 and, thus, Joseph Raffa should be personally liable.

Defendants counter, and I agree, that Joseph Raffa d/b/a Raider Construction is an improper party because no such entity exists. Regardless of whether Raider Construction was authorized to do business in the Virgin Islands before 1997, it is and remains a viable legal entity under Virgin Islands law and is subject to suit in this litigation until the final resolution of this matter. As Valeri has shown no independent basis for holding one of its officers personally liable, I will deny her request to add Joseph Raffa in his individual capacity under Rule 15(c).

**C. Raffa Associates**

In order to relate her third amended complaint to include

Raffa Associates, plaintiff must show that Raffa Associates had notice of the action and was not originally named but for a mistake of identity. There is no dispute on the issue of notice. It appears clear that Raffa Associates had notice of the institution of the original action because Raider Construction and Raffa Associates share the same officers and place of business. See *Singletary v. Pennsylvania Dept. of Corrections*, 266 F.3d 186, 196 (3d Cir. 2001) (noting that notice is imputed on a party with a shared interest to a named defendant). Thus, as Raider Construction received notice of the action because it was named in the original complaint, this notice can be imputed to Raffa Associates. See 6A CHARLES A. WRIGHT, ARTHUR R. MILLER & MARY KAY KANE, *FEDERAL PRACTICE AND PROCEDURE*, CIVIL 2D § 1499 (3d ed. 1990) ("Identity of interest generally means that the parties are so closely related in their business operations or other activities that the institution of an action against one serves to provide notice of the litigation to the other.").

The issue of whether there was a mistake of identity is a closer call. Plaintiff argues that she made a "mistake of identity" because she believed that Raider Construction had been the party responsible for the pool renovations. It was not until September 14, 1998 (more than a year after filing the original complaint) that Valeri discovered that Raffa Associates, and not

Raider Construction, was listed as the contractor.<sup>3</sup> This jurisdiction, as well as other courts in this circuit require a true mistake of identity (i.e. typo, service of process error, etc.) rather than mere ignorance of the true party for Rule 15(c)(3) to apply. In short, Rule 15(c)(3) does not blindly authorize a plaintiff to add a newly discovered party and relate back to the date of the initial complaint. See *In re Tutu Wells Litigation*, 909 F. Supp. 980, 984 n.4 (D.V.I. 1995) (rejecting the plaintiff's attempt under Rule 15(c)(3) to add Exxon, a subsidiary of the named defendant Esso, because there was no mistake of identity); see also *Mailey v. SEPTA*, 204 F.R.D. 273, 276 (E.D. Pa. 2001) (lack of knowledge that two companies were potentially liable resulted from failure to investigate fully, not a mistake of identity); *Slater v. Skyhawk Transp., Inc.*, 187 F.R.D. 185, 195 (D.N.J. 1999) ("Rule 15(c)(3) permits an amendment to relate back only where there has been an error made concerning the identity of the proper party – not where there is lack of knowledge of a party.") (citation omitted); *id.* at 196 (holding that Rule 15(c)(3) only used to substitute proper party

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<sup>3</sup> Apparently, plaintiff argues for a liberal interpretation of "mistake of identity," which would permit the addition, and not substitution, of new defendants under Rule 15(c)(3). See *Mathai v. Catholic Health Initiative*, Civ. No. 00-656, 2000 WL 1716747, 2000 U.S. Dist. LEXIS 16555 (E.D. Pa. Nov. 16, 2000) (allowing plaintiff to add hospital as new defendant upon learning original defendant not successor to hospital and suit proceeded against both defendants due to closeness of relationship).



for misidentified one, not to add an additional defendant); *Jordan v. Tapper*, 143 F.R.D. 575, 588 (D.N.J. 1992) (noting that relation back under Rule 15(c) is inapplicable if the proposed party could have understood that it was not named due to plaintiff's trial strategy or intentional decision rather than a mistake).

Accordingly, Valeri's motion for relation back must be denied. First, she made no mistake of identity because Raider Construction is already a proper party to this suit. She merely did not know that Raffa Associates also may have been potentially liable. Second, Valeri wants to add Raffa Associates as an additional defendant rather than substitute it for Raider Construction. Finally, the history of this case implies a conscious decision not to bring Raffa Associates in as a party defendant. Valeri discovered its existence on September 14, 1998, yet participated in a second unsuccessful mediation with the originally named defendants seven months later on March 25, 1999. It would appear that the plaintiff made an intentional decision to proceed with the named defendants and not seek to name additional defendants by not adding Raffa Associates before this second round of mediation. Accordingly, I find that there is no basis for allowing plaintiff's motion for relation back of her third amended complaint to include Raffa Associates as a

defendant.

### III. CONCLUSION

Valeri has provided no basis for the relation back to the date of her initial complaint for defendants Joseph Raffa, Frank Raffa, Joseph Raffa d/b/a Raider Construction and Raffa Associates under Rule 15(c)(3). Therefore, I will deny her motion for relation back under Rule 15(c) and will dismiss these four defendants from this case.

**ENTERED this 17th day of May, 2002.**

**FOR THE COURT:**

\_\_\_\_\_/s/\_\_\_\_\_  
**Thomas K. Moore**  
**District Judge**

**ATTEST:**  
**WILFREDO F. MORALES**  
**Clerk of the Court**

By: \_\_\_\_/s/\_\_\_\_\_  
**Deputy Clerk**

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Carole G. Valeri,

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Marriott Corporation, d/b/a  
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Resort; Marriott International  
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Management Corporation; Prime  
Hospitality Corporation; Raider  
Construction, Inc.; Joseph W.  
Raffa, d/b/a Raider Construction;  
Raffa Associates, Inc.; Joseph W.  
Raffa; Frank T. Raffa; and Joseph  
M. Reboulet,

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**Lorren D. Caffee, Esq.**

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*For the plaintiff,*

**Claudette V. Ferron, Esq.**

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*For defendants Joseph W. Raffa, d/b/a Raider  
Construction, Raffa Associates, Inc., Joseph W. Raffa  
and Frank T. Raffa.*

**ORDER**

For the reasons set forth in the foregoing Memorandum of  
even date, it is hereby

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**ORDERED** that plaintiff's motion for relation back (Docket No. 180) is **DENIED**; and it is further

**ORDERED** that the motion to dismiss of defendants Joseph W. Raffa, d/b/a Raider Construction, Raffa Associates, Inc., Joseph W. Raffa and Frank T. Raffa (Docket No. 173) is **GRANTED**.

**ENTERED** this 17th day of May, 2002.

**FOR THE COURT:**

\_\_\_\_\_/s/\_\_\_\_\_  
**Thomas K. Moore**  
**District Judge**

**ATTEST:**  
**WILFREDO F. MORALES**  
**Clerk of the Court**

By: \_\_\_\_/s/\_\_\_\_\_  
**Deputy Clerk**

**Copies to:**  
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